

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

**The Lutheran Retirement Home of Greater
Seattle (dba The Hearthstone Retirement
Living)
Plastic Sales and Service, Inc.
Karkrie, LLC
Ruben and Patricia Rael**

No. DE _____

TO: The Hearthstone Retirement Living
Attention: Mary Lou Stuenzi
6720 East Green Lake Way North
Seattle, Washington 98103

Plastic Sales and Service, Inc.
Attention: John Canfield
6870 Woodlawn Avenue Northeast
Seattle, Washington 98115

Karkrie, LLC
Attention: Ruben Rael
6870 Woodlawn Avenue Northeast
Seattle, Washington 98115

Ruben and Patricia Rael
6870 Woodlawn Avenue Northeast
Seattle, Washington 98115

TABLE OF CONTENTS

I.	INTRODUCTION	
II.	JURISDICTION	
III.	PARTIES BOUND	
IV.	DEFINITIONS	
V.	FINDINGS OF FACT	
VI.	ECOLOGY DETERMINATIONS.....	
VII.	WORK TO BE PERFORMED	
VIII.	TERMS AND CONDITIONS OF ORDER.....	
	A. Public Notice.....	
	B. Remedial Action Costs	
	C. Implementation of Remedial Action.....	
	D. Designated Project Coordinators	
	E. Performance	
	F. Access	
	G. Sampling, Data Submittal, and Availability	
	H. Public Participation.....	
	I. Retention of Records.....	
	J. Resolution of Disputes.....	
	K. Extension of Schedule.....	
	L. Amendment of Order	
	M. Endangerment	
	N. Reservation of Rights.....	
	O. Transfer of Interest in Property.....	
	P. Compliance with Applicable Laws.....	
	Q. Indemnification.....	
IX.	SATISFACTION OF ORDER.....	
X.	ENFORCEMENT	
	EXHIBIT A	Site Figures
	EXHIBIT B	Public Participation Plan

I. INTRODUCTION

The mutual objective under this Agreed Order (Order) of the State of Washington, Department of Ecology (Ecology) and the following named PLPs: The Lutheran Retirement Home of Greater Seattle (The Hearthstone); Plastic Sales and Service, Inc. (Plastic Sales); Karkrie, LLC (Karkrie); Ruben and Patricia Rael (The Rael Family); herein referred to collectively as the PLPs, under this Agreed Order is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLPs to complete a Remedial Investigation/Feasibility Study (RI/FS) and prepare the first draft of the Draft Cleanup Action Plan (DCAP) for Plastic Sales Site, and to conduct interim remedial action at the Former Laundry Building Property area within the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Plastic Sales and Service Site and is generally located at 6860 and 6870 Woodlawn Avenue Northeast, Seattle, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Plastic Sales and Service Site, as currently known to Ecology, is more particularly described in the Site Figures 1 and 2 (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Former Laundry Building Property: The Former Laundry Building Property is comprised of King County Assessor Parcel No. 9528104695, and is located at 6860 Woodlawn Avenue Northeast. The Former Laundry Building Property is more particularly described in Site Figure 2 (Exhibit A).

C. Dry Cleaner Building Property: The Dry Cleaner Building Property is comprised of King County Assessor Parcel Nos. 9528104725 and 9528104735 and is located at 6870 Woodlawn Avenue Northeast. The Dry Cleaner Building Property is more particularly described in Site Figure 2 (Exhibit A).

D. Parties: Refers to the State of Washington, Department of Ecology and The Lutheran Retirement Home of Greater Seattle (The Hearthstone) and Plastic Sales and Service, Inc. (Plastic Sales), Karkrie, LLC (Karkrie), and Ruben and Patricia Rael (the Rael).

E. Potentially Liable Persons (PLPs): For the purposes of this Order, refers to the Lutheran Retirement Home of Greater Seattle (the Hearthstone), Plastic Sales and Service, Inc. (Plastic Sales); Karkrie, LLC (Karkrie) and Ruben and Patricia Rael (the Rael).

F. Agreed Order or Order: Refers to this Order and each of the attached and incorporated exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLPs:

A. The Site, as currently known to Ecology, is generally located at 6860 and 6870 Woodlawn Avenue Northeast, Seattle, Washington. (Figure 1.)

B. In an interview by Farallon in March 2004 with Mr. Robert Bell, the former owner/operator of the former Sunshine Laundry and Dry Cleaning Company (Sunshine Cleaners), Mr. Bell indicated that Sunshine Cleaners originally owned and occupied the Former Laundry Building Property starting in 1931. Mr. and Mrs. Bell and Sunshine Cleaners were the property owners at the Site during at least some of the time of release or disposal of hazardous substances. The Bells and Sunshine Cleaners transferred their interests in the Former Laundry Building Property in 1977. The Raelis acquired the Former Laundry Building Property in 1995 and transferred it to Karkrie LLC in 2000. Karkrie sold the Laundry Building parcel to the Hearthstone in 2005, and remains the current owner of a portion of the site. The Hearthstone also remains a current owner of a portion of the Site. Plastic Sales operated in the Former Laundry Building at various times between 1977 and 2006. Further, according to Mr. Bell, Sunshine Cleaners initiated dry cleaning operations in 1948 in the adjacent Dry Cleaner Building located northeast of the Laundry Building (Figure 2).

C. At the time Sunshine Cleaners and the Bells acquired the Dry Cleaner Building Property in approximately 1948, it was developed with a residence. Subsequently, the residence was demolished and the Dry Cleaner Building was constructed on the Dry Cleaner Building Property by Sunshine Cleaners to house the dry cleaning operations.

D. According to Mr. Bell, the dry cleaning equipment installed by Sunshine Cleaners in the Dry Cleaner Building in 1948 used Stoddard solvent, which was the primary dry cleaning solvent in use from the late 1920s to the late 1950s. Stoddard solvent is a mixture of petroleum distillate fractions comprising over 200 different compounds, primarily in the same carbon chain range as gasoline. The Stoddard solvent was stored in two underground storage tanks (USTs), one 1,500-gallon UST and one 2,000-gallon UST, which are located in Woodlawn Avenue Northeast adjacent to the north side of the Dry Cleaner Building. The USTs were reportedly

abandoned in-place in 1958 when Sunshine Cleaners began using PCE for its dry cleaning operations.

E. PCE was reportedly stored in a 200-gallon aboveground storage tank (AST) inside the Dry Cleaner Building. The former location of the AST is unknown. The former dry cleaning equipment, which was used for Stoddard solvent and PCE, was located in the west portion of the Dry Cleaner Building. Dry cleaning operations continued at the Site until 1977.

F. Plastic Sales began leasing the Dry Cleaner Building in 1977 and has occupied the building to the present. Historical and present operations conducted by Plastic Sales have not involved dry cleaning. However, Plastic Sales agrees it utilized solvents on the Site which contained at least some of the hazardous substances released at the Site.

G. The Raels formerly owned the Dry Cleaner Building and Laundry Building Properties. Karkrie, LLC is the current owner of the Dry Cleaner Building Property.

H. Farallon Consulting, L.L.C. (Farallon) prepared a Draft Remedial Investigation/Focused Feasibility Work Plan (RI/FS Work Plan) dated September 23, 2005 and the Draft Remedial Investigation and Feasibility Study Report, Plastic Sales and Service Site, 6870 Woodlawn Avenue Northeast, Seattle, Washington dated October 30, 2007 (Draft RI/FS) under Ecology's Voluntary Cleanup Program Identification NW1634.

I. Based on the results of the Draft RI/FS, the target media identified for the cleanup action are soil, soil vapor, and groundwater because these media represent the highest probable risk to human health and the environment based on the exposure pathway analysis performed. The constituents of potential concern identified for the RI/FS included the following halogenated volatile organic compounds (HVOCs):

- PCE;
- trichloroethene;
- cis-1,2-dichloroethene;
- trans-1,2-dichloroethene; and
- vinyl chloride.

J. Two groundwater-bearing zones are present within the alluvial deposits beneath the Site and the Former Laundry Building Property. A shallow unconfined water-bearing zone is present from approximately 6 to 20 feet bgs, herein referred to as the Shallow Zone groundwater. The Shallow Zone is underlain by a semi-confined to confined groundwater-bearing zone referred to as the Deep Zone groundwater (21 to 70 feet bgs). The Deep Zone is underlain by a silt layer encountered at a depth of approximately 70 feet bgs. The groundwater contours indicate a groundwater flow direction to the north-northwest in the Shallow Zone and to the north in the Deep Zone.

K. The nature and extent of soil and groundwater in Shallow and Deep Zone, based on the existing data are presented in the Draft RI/FS. Additional data may be collected to further define the extent of the dissolved PCE plume in the Shallow and Deep Zone.

L. Ecology conducted a Site Hazard Assessment at Plastic Sales in 2007-2008. Based on the releases of hazardous substances to soil, groundwater, and sediment and suspected releases to surface water the Site was ranked "2" on the Washington State Hazardous Sites List on February 5, 2008. This ranking is based on a scale of 1 to 5. According to this scale "1" represents the highest relative risk, and "5" represents the lowest relative risk. This ranking is designed to estimate the potential threat to human health and/or the environment, relative to all other sites in Washington State.

M. On the basis of the facts set forth herein, Ecology has determined that a release or threatened release of hazardous substances at the Site requires remedial action to protect human health and the environment.

VI. ECOLOGY DETERMINATIONS

A. The PLPs "owners or operators" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to The Hearthstone, Plastic Sales, Karkrie, the Rael, and the Bells dated April 15, 2008, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Hearthstone, Plastic Sales, Karkrie, the Rael, and the Bells are PLPs under RCW 70.105D.040 and notified all of the above of this determination by letters dated May 2008. The Bells have declined to participate in this Agreed Order.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. An Interim Action may be conducted at the Laundry Building Property, subject to prior approval by Ecology as described below, to address contamination located beneath the northeast portion of the Former Laundry Building Property. (Figure 2.) The Interim Action is currently intended to be performed during the proposed development of the Former Laundry Building Property by the Hearthstone,

which will include excavation for one floor of subsurface parking. The circumstances at this Site warrant an interim action consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. In this Section (Work to be Performed), one or more of the PLPs are designated as “lead” for certain tasks. However, all PLPs are jointly and severally liable to Ecology for all work at the Site, including but not limited to all work described in this Order.

B. The PLPs shall complete an RI/FS and prepare the first draft of the Draft CAP for the Site that meets the requirements of MTCA and WAC 173-350 through 173-340-390, and conduct an Interim Action at the Former Laundry Building Property area that meets the requirements of MTCA and WAC 173-340-430. Plastic Sales will be lead for completion of the RI/FS and draft CAP. The Hearthstone will be lead for the Interim Action.

C. The PLPs have prepared a draft RI/FS Work Plan and a draft RI/FS Report under Ecology’s Voluntary Cleanup Program (VCP) and submitted the RI/FS Work Plan and Report for Ecology’s review and comment. Ecology provided comments on the draft RI/FS report in a letter dated June 16, 2008 and in an email from counsel dated November 18, 2008. Within 60 days of the effective date of this Order, the PLPs will submit a revised RI/FS for Ecology’s review and comment addressing Ecology’s comments. This RI/FS Draft shall consider and evaluate all possible scenarios for moving forward, taking into account the possibility that the interim action may or may not occur. In addition, the RI/FS Draft shall evaluate cleanup alternatives under four scenarios: Scenario One: the development at only the Former Laundry

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Building Property will proceed in conjunction with the remedial actions at the Site. Scenario Two: the development of only the Dry Cleaner Building Property will proceed in conjunction with remedial actions at the Site. Scenario Three: development of both the Former Laundry Building and Dry Cleaner Building Properties will proceed in conjunction with remedial action at the Site. Scenario Four: Redevelopment will not occur in conjunction with the remedial action. The RI/FS Draft shall include data collected from the new shallow and deep wells installed in 2008. The RI/FS Draft shall additionally analyze whether there is a need for additional investigative and/or confirmational data collection at the Site. If Ecology has additional comments on the RI/FS Draft, it will notify the PLPs in writing. Within 60 days of receiving Ecology's comments (if any), the PLPs will submit a revised draft for Ecology's review and approval that shall incorporate Ecology's additional comments. Ecology will notify the PLPs when the RI/FS Draft is ready for public comment, which will create the Public Review Draft. The Public Review Draft of the RI/FS will be made available for public review consistent with WAC 173-340-600(13)(c) and as described in Section VII.D below. Following completion of the review period, Ecology will send Plastic Sales a letter either approving the RI/FS or asking for Plastic Sales to address additional comments. Within 60 days of receiving Ecology's letter, the PLPs will submit for Ecology's review and approval, a revised RI/FS (Final RI/FS) addressing Ecology's comments, if any.

D. The PLPs will submit an Interim Action Work Plan detailing the plan for the interim action for Ecology's review and approval. The Interim Action Work Plan will be submitted to Ecology within 60 days of the effective date of this Order. The Interim Action Work Plan shall contain the information listed in WAC 173-340-430(7). As part of this Interim Action Work Plan, and pursuant to WAC 173-340-350(7)(c)(iv), the PLPs will prepare and

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submit for Ecology review and approval a Sampling and Analysis Plan (SAP) and a Quality Assurance Project Plan (QAPP). A Health and Safety Plan (HSP) shall also be submitted for Ecology review and comment. Unless Ecology determines otherwise based on a subsequent review of circumstances, the PLPs shall not commence the Interim Action work at the Site until Ecology, after public notice and comment, has approved the Interim Action Work Plan. Ecology currently intends to hold one combined public comment period for the RI/FS Report, the Interim Action Work Plan, and for the SEPA determination on the Interim Action. Within five (5) working days after Ecology's final (post public comment) approval of the RI/FS Report, the PLPs shall submit a letter to Ecology indicating (1) whether the PLPs intend to proceed with the Work to be Performed in the Interim Action Work Plan; and (2) whether the PLPs intend to integrate their development plans for any or all of the properties associated with the Site with the ultimate Cleanup Action Plan for the Site. If the PLPs submit a timely written indication to proceed with implementing the Interim Action Work Plan as described above, then the Ecology approved Interim Action Work Plan shall become an integral and enforceable part of this Order, and the PLPs shall complete the Interim Action in accordance with the schedule and requirements in the Ecology approved Interim Action Work Plan. If the PLPs elect to defer the Interim Action or if the PLPs do not submit a timely notification of an intent to proceed with implementing the Interim Action, then implementation of the Interim Action will not be required under this Order, unless later amended.

E. The PLPs will address the following items as part of the Interim Action Work Plan: 1) construction shoring to assist excavation dewatering, 2) soil excavation/segregation and disposal, 3) permanent dewatering and disposal of dewatering water 4) describe the method of performance sampling and confirmation of soil quality to establish compliance with soil cleanup

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standards under MTCA, and 5) provide engineering information and plans for the construction of a vapor barrier and passive vapor ventilation system to be incorporated into the floor slab dewatering system design for the planned construction.

F. Within 45 days of completing the interim action, the PLPs will submit an Interim Action Completion Report for Ecology's review and approval which details the actions taken at the Site, the results of the interim action, and any data collected during the interim action.

G. Within 90 days of Ecology approval of the final Remedial Investigation and Feasibility Study report, the PLPs shall prepare the first draft of a Draft Cleanup Action Plan (DCAP) in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. The DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the Remedial Investigation/Feasibility Study and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions. The DCAP shall also take into account any interim actions conducted at the Site, and any data collected as part of those actions. The DCAP will include, but not be limited to, the information listed under WAC 173-340-380.

H. Each deliverable, once approved by Ecology, becomes an integral and enforceable part of this Order.

I. During performance of this Order, the PLPs will submit written quarterly progress reports to Ecology. Progress reports shall combine the following information into one integrated report addressing the RI/FS, Draft CAP, and Interim Action. The progress reports shall contain the following information regarding the preceding reporting period:

- a) A description of the actions which have been taken to comply with the Agreed Order.
- b) Summaries of sampling and testing reports and other data reports received by PLPs.
- c) Summaries of deviations from approved work plans and an explanation of the PLPs' position on whether the deviations constitute minor or substantial changes to the work to be performed, in accordance with Section VII.L (Amendment of Order).
- d) Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments.
- e) Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the Work to be Performed and Work Plans.
- f) Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays.
- g) Changes in key personnel.
- h) A description of work planned for the next reporting period.

J. The PLPs shall share all data and all relevant information with each other. The PLPs shall ensure that their actions under this Order are coordinated and to ensure that all deliverables to Ecology under this Order incorporate all relevant data and information collected by any and all of the PLPs prior the due date of each deliverable.

K. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$45,621.48 in remedial action costs related to this facility as of December 31, 2008. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to December 31, 2008, the PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

C. Implementation of Remedial Action

If Ecology determines that the PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLPs' failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the PLPs are not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Sunny Linhao Becker, P.E.
Ecology Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7187

The project coordinator for the Interim Action is:

John Funderburk
Sound Environmental Strategies
2400 Airport Way South, Suite 200
Seattle, WA 98134
(206) 306-1900

The project coordinator for the RI/FS and Draft CAP is:

J. Riley Conkin, L.G., L.H.G.
c/o Farallon Consulting, L.L.C
975-5th Avenue Northwest
Issaquah, WA 98027
(425) 295-0800

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order. The two Project coordinators for the PLPs shall work together and shall coordinate to ensure that the PLPs' actions under this Order do not conflict, and to ensure that Ecology need not serve as an intermediary between the PLPs. When speaking with either of the PLPs' project coordinators on the issue for which he/she is designated, Ecology will expect that the Project Coordinator speaks for, and will communicate Ecology's messages to, all the PLPs.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or Chapter 18.43 RCW.

The PLPs shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that any of the PLPs either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed),

Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the PLPs shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior

Ecology approval, the PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Ecology's Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by the PLPs to waive any right they may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If any of the PLPs withholds any requested records based on an assertion of privilege, the PLP(s) shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on the Site pursuant to this Order shall be considered privileged.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is

a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLPs. The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the

Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event any of the PLPs determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such

remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or any of the PLPs determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Parties of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its

employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written notification from Ecology that the PLPs has completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

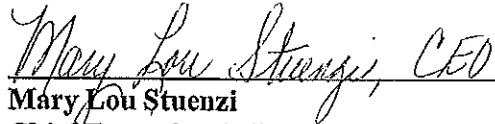
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

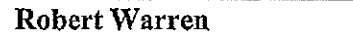
DRAFT

**THE HEARTHSTONE RETIREMENT
LIVING**



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**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

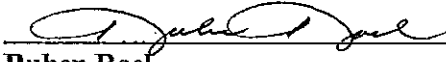

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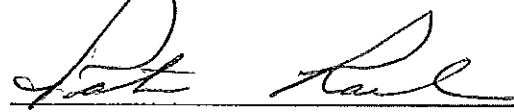

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